

**SUBSIDY LAYERING REVIEW
MEMORANDUM OF UNDERSTANDING
BETWEEN THE
OHIO HOUSING FINANCE AGENCY,
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT –
REGIONAL ADMINISTRATOR'S OFFICE,
AND
THE UNITED STATES DEPARTMENT OF AGRICULTURE, RURAL
DEVELOPMENT, RURAL HOUSING SERVICE (OHIO)**

Parties:

This Memorandum of Understanding (MOU) involves three parties, individually a "party", and collectively the "parties": one Ohio State party, the Ohio Housing Finance Agency (OHFA); and two Federal agencies, the United States Department of Housing and Urban Development (HUD), and the United States Department of Agriculture (USDA) Rural Development (RD), Rural Housing Service (RHS).

Although not a party to the MOU, the applicant referenced in this MOU is the entity or individual that applies to one or to multiple of the three parties for assistance.

Purpose:

The purpose of this MOU is to establish the framework by which OHFA, HUD and RD can harmonize efforts and collaborate to collect and share the information necessary to conduct subsidy layering reviews required by pertinent State and Federal laws. Subsidy layering reviews are conducted by State or Federal Agencies to certify that there is no overlap in government subsidies when a developer applies for a combination of funds or resources from Federal, State and/or local programs to develop, rehabilitate, and/or refinance multi-family housing, regardless of the authority for the specific housing development program, and regardless of the source or proposed use of the potential funding or other assistance.

This MOU does not modify the role of the State agency, OHFA, to serve as the designated entity to perform the primary subsidy layering review for Low Income Housing Tax Credit development projects in Ohio. It will also detail the process by which OHFA will share information collected by OHFA with the two Federal agencies whenever a developer indicates it will receive funding or assistance from HUD or RD along with LIHTC's, thereby permitting them to conduct any confirmatory subsidy layering reviews necessary by law and regulation. It will also outline the process for developments which include HUD and RD financing without LIHTC's. The MOU will establish a process for the efficient collection and sharing of information among the parties, and it will permit the creation of standards so the parties will be working with the same figures on any given project. Finally, this MOU will establish a means for identifying and resolving subsidy layering review problems and issues as they arise.

By setting the framework for accomplishing these tasks, this MOU is intended to ensure the collection and sharing of necessary information between the parties, the accurate and timely completion of required subsidy layering reviews to guarantee good stewardship of limited State and Federal resources, and the efficient delivery of permissible assistance by all three parties. Through these means, the parties hope to achieve their joint primary goal of creating a more effective and efficient process for the development of affordable housing in Ohio.

Issue Statement:

The Housing and Economic Recovery Act of 2008 (HERA), Pub.L. 110-289, 122 Stat. 2654, encouraged the Federal government to standardize the subsidy layering review process, but consistency is still lacking between and among State and Federal agencies. In many cases, Federal programs have a common denominator approach where some Federal programs overlap only when another Federal program mirrors all of the same requirements. Inconsistency leads to slow and uncoordinated processing and decision making. Issues related to data collection, subsidy layering reviews, and the timing for processing applications needs to be addressed to improve the decision-making process.

To address these problems, HUD, USDA, and the United States Department of Treasury initiated an interagency effort to align Federal rental housing policies. This MOU is part of the pilot process to accomplish the alignment.

Background:

A number of Federal, State and local programs provide funds and assistance to developers to encourage the development, rehabilitation, and/or preservation of multi-family housing. Because the various agencies have different programs with a potential for impermissible overlapping funding, most government programs aimed at spurring the development of affordable housing require Subsidy Layering Reviews to ensure that Federal, State and local funds and resources are not duplicative in any given project. To accomplish that purpose, in 1989, the Federal government enacted the Department of Housing and Urban Development Reform Act of 1989, (42 U.S.C. 3545(d)), (HUD Reform Act or HRA). Section 102(d) of the HUD Reform Act ensures that housing projects receiving HUD assistance do not receive excessive compensation by combining various forms of HUD program assistance with duplicative assistance from other Federal, State, or local agencies (other Government Assistance.) In that section, the HUD Reform Act requires the Secretary of HUD to limit assistance granted to a project to: "not more than is necessary to provide affordable housing after taking account of [Other Government Assistance]."

In October of 1992, the Federal government enacted the Housing and Community Development Act of 1992, Pub. L. No. 102-550. Section 911 of that Act requires the Secretary of HUD to establish guidelines for Housing Credit Agencies (HCAs) to "implement" Section 102(d) of the HUD Reform Act that provision requires the Secretary to certify that HUD assistance to housing projects is not more than necessary to provide affordable housing, after taking other Federal and State assistance into account, and to adjust the amount of HUD assistance to compensate for changes in assistance amounts from other sources. To avoid the constitutional difficulties that

would arise if Section 911 were understood to vest in HCAs the exercise of significant authority under Federal law, the President interpreted Section 911 to permit the Secretary to formulate guidelines under which the Federal government retains the ultimate authority to make the determinations required by section 102(d).

In July 2008, the Federal government enacted the HERA. Through Section 2835(a)(1)(F), HERA provides that project-based voucher housing assistance payments (HAP) contracts for existing housing, a subsidy layering review in accord with section 102(d) of the HUD Reform Act is not required. Under HERA, when project-based voucher assistance is proposed for newly constructed or rehabilitated structures, the requirement for subsidy layering reviews may be satisfied if the applicable State or local agency has conducted such a review. Specifically, HUD determined that Housing Credit Agencies (HCAs), as defined under Section 42 of the Internal Revenue Code of 1986 (IRC), may conduct the Subsidy Layering Review for newly constructed and rehabilitated structures combining other forms of government assistance and Section 8 project-based voucher assistance. Exercising its authority under HERA, on July 9, 2010, HUD published Administrative Guidelines in the Federal Register to detail the process that qualified Housing Credit Agencies (HCAs), as defined under Section 42 of the Internal Revenue Code of 1986 (IRC), must follow in implementing subsidy layering reviews in accordance with the requirements of Section 2835(a)(1)(M)(i) of HERA.

In Ohio, OHFA provides assistance to develop, rehabilitate and/or refinance low-income multi-family and single family housing through a variety of funding programs, including the Low Income Housing Tax Credits (LIHTC) program. LIHTC is a tax incentive program designed to increase the supply of quality, affordable rental housing by helping developers offset the costs of low-income rental housing developments. This program has been the largest driver of the production of new affordable housing for very low and low income tenants in Ohio and the nation over the past several years. Since 1987, OHFA has used LIHTC to facilitate the development of over 77,000 affordable rental housing units in Ohio. OHFA creates a Qualified Allocation Plan detailing the competitive application process and the procedures and policies for the distribution of the State's allocation of Housing Credits under the LIHTC program. The IRS regulates the program by means of Section 42 of the Internal Revenue Code, which in part states: "the housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency [HCA] determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period".

Beyond the LIHTC program, the State of Ohio develops affordable housing by means of HUD's Section 8 project based voucher housing assistance program, and RD's Section 515 program. HUD's Office of Public Housing and Voucher Programs has authorized OHFA to conduct subsidy layering reviews for newly constructed and rehabilitated housing projects in Ohio which that will receive Section 8 project-based voucher housing assistance. Similarly, RD administers a loan program in Ohio authorized by Section 515 of the Housing Act of 1949, which provides financing for housing very low and low income tenants in rural areas. This includes development of new units or preservation of existing Section 515 financed units.

The OHFA, RD, and HUD programs specifically listed in this MOU are the only programs intended to be covered by the MOU at this time.

Scope of the Agreement:

Under this MOU, RD, HUD, and OHFA agree to engage in cooperative efforts, including, but not limited to, the collection and sharing of information as described below, to enable each agency to ensure that only the necessary federal assistance is provided through each federal, state and local program, and that no duplication of funding is awarded to any developer.

Limitation:

This MOU is intended only to set a framework for cooperation and collaboration, but it does not bind any of the parties to take future actions. This MOU does not obligate funding or resources, and it does not create a cooperative agreement between the parties.

The parties understand and agree that no funds or resources are obligated under this MOU and understand that no funds or resources will change hands between the parties as a result of this MOU. The parties also agree and intend that this MOU will not create any entitlement in any applicant for funding or assistance in connection with the various programs run by these agencies.

The Intended Process for Cooperation between HUD, OHFA, and RD

In Ohio, HUD and RD share a portfolio of properties that contain both project-based HUD Section 8 assistance and RD Section 515 financing. To preserve these affordable rental properties, a transfer of the asset is often needed to bring in a new ownership entity which is willing to preserve the housing. In these cases, the RD and HUD financing typically stays in place, and new resources may be provided by RD, HUD, and/or OHFA.

The parties anticipate that in such situations it will not be necessary for HUD to provide a subsidy layering review. Rather, in such cases, HUD will defer that responsibility to either RD or OHFA unless otherwise required by law or as required by HUD in limited circumstances. Regardless of which agency performs the subsidy layering review, HUD will still complete a 2530 (Past Participation Certification) review of the new ownership entity and management agent to ensure they are eligible to participate in the HUD program.

Upon receipt of an application, RD will contact HUD (and/or OHFA, when OHFA is acting for HUD) within ten (10) days to make it aware of the application process and to provide any information necessary for HUD to complete its review. The borrower and management agent will be responsible for providing required information to HUD for its review. Each party will provide the other party or parties a timeline for completion of its review process.

Cooperation in Cases Involving Low Income Housing Tax Credits

The development, preservation and quality of most affordable rental housing in Ohio is contingent upon the developer receiving a federal tax incentive Housing Credit known as Low Income Housing Tax Credits (LIHTC) from OHFA. These federal income tax credits offset the building acquisition, new construction, or substantial rehabilitation costs for rental housing developments. Therefore, this MOU will center on the OHFA application process and how those housing projects selected for processing by OHFA will be underwritten.

Under the LIHTC program, the current OHFA's Qualified Allocation Plan outlines policies and procedures for the program, and calls for an initial applicant proposal. In the initial application proposal, (and thereafter as plans change), the applicant is responsible for noting that it will receive or anticipates receiving funds or assistance from HUD or RD." During the subsidy layering review process under the LIHTC program, OHFA will seek input from RD and HUD whenever any applicant indicates it will be obtaining RD or HUD funding.

Within ten (10) days after OHFA receives an LIHTC program application from a developer indicating the developer will receive or anticipates receiving any financial subsidy or assistance from HUD (such as project-based Section 8 voucher subsidy) and/or RD (such as the Section 515 loan programs to assist in the development of affordable multifamily rental housing for very low-, low-, and moderate-income families; the elderly; and persons with disabilities), OHFA will provide the project excel application (Affordable Housing Funding Application, Project Pro-forma section) to the named party or parties. After OHFA determines that an applicant will receive a binding reservation from OHFA, the applicant will be required to submit a final application by a deadline set by OHFA.

Subsidy Layering Review for Projects Involving OHFA and HUD Funding (Typically Public Housing Authority Applicant)

In September 2010, OHFA received approval to conduct subsidy layering review on behalf of HUD on projects that propose using Section 8 Project-Based Voucher Housing Assistance Payments with (LIHTC) housing credits. OHFA will perform these subsidy layering reviews on behalf of HUD in accordance with applicable HUD regulations, mortgage letters, and/or administrative guidelines for all projects that receive (LIHTC) housing credits.

Further, OHFA received a letter from the Deputy Assistant Secretary for the Office of Public Housing and Voucher Programs dated August 3, 2011 which authorized them to perform SLRs on behalf of HUD for newly constructed and rehabilitated projects that will receive Section 8 project-based voucher housing assistance. This authorization is in accordance with Section 2835(a)(1) of HERA and Federal Register FR-5417-N-01: *Subsidy Layering Reviews for Proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts* published on July 9, 2010.

Since OHFA has received authorization on behalf of HUD to perform SLRs for this type of project, it is intended that the SLR requirements for newly constructed and rehabilitated projects

with Section 8 project-based voucher housing assistance will be satisfied if a SLR is conducted in accordance with the procedures and requirements identified by this MOU and incorporated documents.

Additionally, pursuant to HUD Community Planning and Development Notice 98-01, the Participating Jurisdiction (PJ) may rely upon the State tax credit allocating agency's evaluation (which is conducted to determine whether there are excess tax credits) to ensure that HUD subsidies are not greater than is necessary to provide affordable housing when combining HOME assistance with the tax credits. Further, the PJ may rely upon HUD's evaluation (conducted in accordance with Section 102(d) of the HUD Reform Act) for projects funded by HUD's Office of Housing (for example, FHA Mortgage Insurance) and Office of Public and Indian Housing and other HUD offices that are required to provide this kind of evaluation. Since OHFA administers HOME funds for the PJ of the state of Ohio, the Ohio Development Services Agency, it is intended that the subsidy layering review requirements under the HOME Investment Partnership Program will be satisfied by this agreement in cases where LIHTC financing or Project Based Voucher financing is sought.

Reexamination Coordination of Information Collected:

During an initial subsidy layering review process, typically within the thirty (30) days after receipt of an initial application, under this MOU, the parties who will or may be providing funding for a project will set a time to meet and discuss the proposed sources and uses of funds (including, but not limited, to builders profit, general overhead, general requirements, debt service and developers fee), along with proposed rents, operating expenses, and required reserve accounts, to agree upon what figures will be utilized for both the subsidy layering review and the underwriting of the project. In cases involving preservation properties, the parties that anticipate providing financing will use that meeting to agree on the scope of work to be completed by reviewing the capital needs assessment. Although each party may utilize a specific underwriting tool of its own choice, it is imperative that each party works with the same set of numbers, and coordinate information collected to ensure that the information gathered will meet the needs of all agencies involved in financing the project.

Therefore, to help the agencies gather and utilize the same sources of information for all decision making, one goal of this MOU is to encourage the parties to this MOU to reexamine both the capital needs process and the appraisal process which any applicant must follow so to ensure that information gathered under each such process will meet the needs of all parties to any given project.

OTHER GENERAL TERMS:

Limits on Sharing Information

It is understood that the information collected and shared under this MOU is for internal analysis and will only be disclosed to the appropriate RD, HUD, and OHFA employees, unless otherwise required by law. Specific information on a proposal may be shared with the applicant and other providers of funds on the respective proposals as appropriate and to other parties as may be required by State public records laws, subject to the requirements of the HUD Reform Act.

Indemnification:

Each party to this MOU must seek its own legal representative and bear its own costs including judgments in any litigation that may arise from performance or non-performance of their respective actions under this MOU. It is specifically understood and agreed that no party will indemnify any other party in such litigation.

Term of Agreement:

This MOU will remain in effect until terminated by written notification of any party.

Annual Review and Renewal of MOU:

This MOU will be reviewed annually for any necessary updates or modifications before the MOU term expires. Thereafter, it may be renewed annually upon written agreement signed by all three parties' representatives.

Termination for Cause:

This MOU may be terminated for cause by executing and delivering ninety (90) days written notice of termination to the other two parties by any of the three parties hereto.

Modification or Amendment:

This MOU may be modified or amended at any time by written agreement of all three parties. Requests for amendments to the MOU may be initiated by any party through written notification.

Party Contact Information and Notification under the MOU:

All notices under this MOU shall be in writing and served on the parties at the addresses specified below and delivered (i) by personal delivery, (ii) by overnight delivery service using a nationally recognized overnight delivery service (such as UPS or Federal Express), or (iii) by e-mail or facsimile transmission. Any notice shall be deemed effective for the purposes of this MOU at the date of delivery (if hand delivered), or one (1) business day after being deposited with a recognized overnight delivery service, or the day sent (if sent by e-mail or facsimile

transmission). For purposes of this MOU, the addresses and other contact information for the parties is as follows (although any party may change its address by providing both other parties with written notice of such change in the manner specified in this Section):

FOR: Ohio Housing Finance Agency

Attention: Sean Thomas

Address: 57 East Main St., Columbus, OH 43215

E-mail: SThomas@ohiohome.org

Telephone: 614-466-5772

Facsimile: 614-466-0606

FOR: United States Department of Housing and Urban Development – Regional Administrator's Office

Attention: Regional Administrator, Region V, Antonio Riley

Address: 77 W. Jackson Blvd., Suite 2608, Chicago, IL 60604

E-mail: Antonio.R.Riley@hud.gov

Telephone: 313-913-8654

Facsimile: 313-913-8293

FOR: United States Department of Agriculture Rural Development Ohio Office

Attention: Gerald Arnott

Address: 200 N. High St., Rm. 507, Columbus, OH 43215

E-mail: Gerald.Arnott@oh.usda.gov

Telephone: 614-255-2401

Facsimile: 614-255-2561

Miscellaneous Provisions:

(a) This MOU is not intended to, and does not restrict the authority of any party to act as provided by law, statute or regulation.

(b) This MOU addresses the activities of the parties, and as such does not address (and thus does not restrict) the activities and authorities of any other Federal or State agency or office.

(c) This MOU is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any person against either the United States or the State of Ohio, or their respective departments, agencies, entities, officers, employees, or agents, or any other person.

(d) This MOU may be executed in one or more counterparts, each of which will be considered an original document.

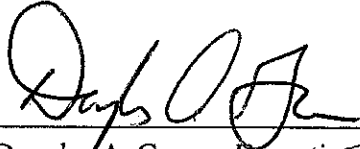
(e) Any information furnished to or between the parties under this MOU may be subject to the Freedom of Information Act, 5 U.S.C. Section 552, and may be subject to the Ohio Public Records Act, unless otherwise exempt from disclosure pursuant to those or other laws.

(f) The invalidity or unenforceability of any provision of this MOU shall not affect the validity or enforceability of the remaining provisions of this MOU.

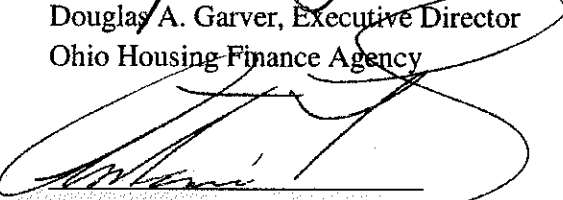
Governing Law:

This MOU shall be governed by and construed in accordance with the laws of the State of Ohio and the Federal laws of the United States of America.


Acceptance and Signature of Each Providing Party:


Douglas A. Garver, Executive Director
Ohio Housing Finance Agency

11/30/11
Date


Antonio Riley, Regional Administrator
HUD Midwest Region

11/29/11
Date


J. Anthony Logan, State Director
USDA, Rural Development, Ohio

11/30/11
Date